

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

William Cooper
Sandra A. Cooper

CASE NO. 10-36053

Debtors.

NOTICE OF HEARING AND MOTION FOR
RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. U.S. Bank N A, its successors and/or assigns (hereinafter "Movant"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 03, 2010, at 1:30 PM, or as soon thereafter as counsel can be heard, before the Honorable Judge Dennis D. O'Brien in Courtroom 2B of the above entitled Court located at 316 Robert St N, Saint Paul Minnesota, 55101-1241.

3. Any response to this motion must be filed and served by delivery not later than October 29, 2010, which is five days before the time set for the hearing (including Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 18, 2010. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy

Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Movant in the original principal amount of \$192307.00, as evidenced by that certain Promissory Note dated February 10, 2009, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated February 10, 2009, executed by William Cooper And Sandra A. Cooper, Husband And Wife, filed for record in the office of the County Registrar of Titles on February 19, 2009, as Document Number T639394, Dakota County, State of Minnesota, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Dakota County, Minnesota and is legally described as follows to wit:

Lot Fifteen (15) in Block Three (3) of South Grove No. 2.

Movant is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Movant.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Movant's interest in the property is not adequately protected where, as of October 13, 2010, Debtor is delinquent for monthly payments as required for the months of December 2009 to July 2010 in the amount of \$1630.88 per month; and August 2010 to October 2010 in the amount of \$1483.85 per month; accruing monthly late charges; and

attorney's fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective reorganization. The value of the property as scheduled by Debtor is \$177,600.00, subject to Movant's mortgage in excess of \$206,812.10.

11. According to Debtor's Statement of Intention, Debtor intends to surrender the property. Since this is a liquidation case, no reorganization is being attempted.

12. Movant desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

13. Movant has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the Movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated: October 13, 2010

WILFORD & GESKE, P.A.

/s/ James A. Geske
James A. Geske, #14969X
Attorneys for Movant
8425 Seasons Parkway, Suite 105
Woodbury, MN 55125-4393
(651) 209-3300

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Receipt#: 34398
TORRENS FEE
MRT FEE
CONSERVATION

\$46 00
\$442 31
\$5 00

T639394



Recorded on: 2/19/2009 12:00:01PM
By LAD, Deputy

Certificate #: 122655

Return to
LSI TITLE COMPANY
2550 RED HILL AVENUE
SANTA ANA, CA 92706

Joel T. Beckman Registrar of Titles
Dakota County, MN

[Space Above This Line For Recording Data]	
LOAN: 7884016062 State of Minnesota	MORTGAGE
Return To 5524346 LSI-LPS East Recording Solutions 700 Cherrington Parkway Doraville, PA 15108	FHA Case No 271-971266-5-703 MIN 100021278840160621

THIS MORTGAGE ("Security Instrument") is given on **FEBRUARY 10, 2009**
The Mortgagor is
WILLIAM COOPER AND SANDRA A COOPER, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

U.S. BANK, N.A.

("Lender") is organized and existing under the laws of **THE UNITED STATES OF AMERICA**, and has an address of **4801 FREDERICK STREET, OWENSBORO, KY 42301**.

Borrower owes Lender the principal sum of
ONE HUNDRED NINETY TWO THOUSAND THREE HUNDRED SEVEN AND NO/100

Dollars (U.S. \$ **192,307.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **MARCH 1, 2039**

and for interest at the yearly rate of **5.000** percent. This Security

Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7

FHA Minnesota Mortgage with MERS - 4/96
AMENDED (MIN) 2005/01
Page 1 of 8
VMP Mortgage Solutions (800)521-7201

Initials

WJC
SC



A
EXHIBIT

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

21. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider ☐ Growing Equity Rider ☐ Other [specify]
☐ Planned Unit Development Rider ☐ Graduated Payment Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
 Witnesses:

 WILLIAM COOPER (Seal)
 -Borrower

 SANDRA A COOPER (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

 (Seal)
 -Borrower

WJC
 SC

Order ID: 5514346
Loan No.: 7884016062

**EXHIBIT A
LEGAL DESCRIPTION**

The following described property:

T
Lot Fifteen (15) in Block Three (3) of South Grove No. 2.

County of Dakota, State of Minnesota.

Certificate of Title No. 122655.

Assessor's Parcel Number: 20-71151-150-03

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

William Cooper
Sandra A. Cooper

CASE NO. 10-36053

Debtors.

MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS MOVANT IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Movant's interest in the property is not adequately protected where:

1. As of October 13, 2010, Debtor is delinquent for monthly payments as required for the months of December 2009 to July 2010 in the amount of \$1630.88 per month; and August 2010 to October 2010 in the amount of \$1483.85 per month accruing monthly late charges; and attorney's fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Movant to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Movant is sufficient cause to entitle Movant to relief from the automatic stay. See *In re Taylor*, 151 B.R. 646 (E.D.N.Y., 1993) and *In re Davis*, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$177,600.00, subject to Movant's mortgage in excess of \$206,812.10.

According to Debtor's Statement of Intention, Debtor intends to surrender the property. Since this is a liquidation case, no reorganization is being attempted.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Movant respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: October 13, 2010

WILFORD & GESKE, P.A.

/e/ James A. Geske
James A. Geske, #14969X
Attorneys for Movant
8425 Seasons Parkway, Suite 105
Woodbury, MN 55125-4393
(651) 209-3300

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

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Sandra A. Cooper

CASE NO. 10-36053

AFFIDAVIT OF U.S. BANK N/ A.

Debtors.

Olivia Todd being first duly sworn on oath, deposes and states:

That I am President of National Default Servicing Corporation authorized outsourcing agent for U.S. Bank N. A.

1. That U.S. Bank N. A., its successors and/or assigns is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated February 10, 2009, executed by William Cooper And Sandra A. Cooper, Husband And Wife, recorded on February 19, 2009, as Document No.T639394 , covering real estate located in Dakota County, Minnesota, legally described as follows, to wit:

Lot Fifteen (15) in Block Three (3) of South Grove No. 2.

2. That I have reviewed the account records relating to the debtor's mortgage loan, account no. ending in 6062.


3. That as of October 06, 2010, the following amounts were owing on this account:

Unpaid Principal Balance	\$190,431.34
Interest through October 06, 2010	\$8,728.06
Attorney Fees and Costs	\$700.00
Late Charges	\$620.64
Escrow Balance	\$5,137.50
Mortgage Insurance Payments	\$154.06
Total Fees	\$66.00
Recoverable Balance	\$1,124.50
TOTAL:	\$206,962.10


4. That the mortgage loan is delinquent for monthly payments as required for the months of December 2009 to July 2010 in the amount of \$1630.88 per month; and August 2010 to October 2010 in the amount of \$1483.85 per month; accruing monthly late charges.

5. This affidavit is given in support of the motion of U.S. Bank N A its successors and/or assigns for relief from the automatic stay.

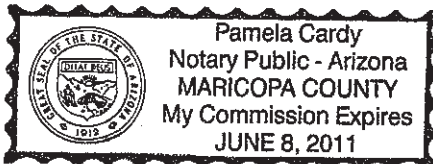
National Default Servicing Corporation authorized outsourcing agent for
U.S. Bank N. A.

By  _____

Subscribed and sworn to before me on October 7, 2010.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

William Cooper
Sandra A. Cooper

CASE NO. 10-36053

Debtors.

UNSWORN DECLARATION FOR PROOF
OF SERVICE

Melissa Roue-Chambers, employed by Wilford & Geske, P.A., attorneys licensed to practice law in this Court, with office address at 8425 Seasons Parkway, Suite 105, Woodbury, MN 55125-4393, declares that on October 13, 2010, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief from Stay, Affidavit, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing same in the post office at Woodbury, Minnesota addressed to each of them as follows:

William Cooper
Sandra Cooper
8765 Branson Drive
Inver Grove Heights, MN 55076

and delivered by e mail notification under CM/ECF on the day efiled with the Court to each of them as follows:

Eric S Day

Mary Jo A. Jensen-Carter

U.S.Trustee

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 13, 2010

/e/ Melissa Roue-Chambers
Melissa Roue-Chambers

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Sandra A. Cooper

CASE NO. 10-36053

ORDER

Debtors.

This case came before the court on the motion of U.S. Bank N. A., seeking relief from the stay imposed by 11 U.S.C. § 362. Based on the motion and the file,

IT IS ORDERED:

1. The movant, its assignees and successors in interest, are granted relief from the automatic stay imposed by 11 U.S.C. § 362 with regard to the mortgage deed dated February 10, 2009, executed by William Cooper And Sandra A. Cooper, Husband And Wife, recorded on February 19, 2009, as Document No. T639394 , covering real estate located in Dakota County, Minnesota, legally described as:

Lot Fifteen (15) in Block Three (3) of South Grove No. 2.
and may pursue its remedies under state law in connection with the mortgage deed.

2. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated:

United States Bankruptcy Judge